

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**WATER DIVISION**

**RESOLUTION NO. W-4254  
May 14, 2001**

**R E S O L U T I O N**

**(RES. W-4254), DONNER LAKE WATER COMPANY (DLWC).  
ORDER AUTHORIZING THE ESTABLISHMENT OF ONE  
MEMORANDUM ACCOUNT FOR LITIGATION EXPENSES.**

**BY LETTER RECEIVED FEBRUARY 26, 2001.**

**SUMMARY**

DLWC is a Class C water company serving 1,300 customers around Donner Lake in Nevada County and parts of Placer County. This Resolution denies DLWC's request to establish a memorandum account to track the costs of legal fees, accounting fees, and other charges in association with a lawsuit filed with the Donner Lake Village Homeowners Association (Association) but grants a request for a memorandum account to track prospectively the regulatory expense including legal and accounting fees associated with the processing of Application (A.) 00-12-011.

**BACKGROUND**

DLWC has been trying for the past several years to secure a loan to build a surface water treatment plant. Pending lawsuits arise from the ongoing dispute between the company and the association over easement rights to ground needed to route the intake from Donner Lake to the treatment plant site. Without this easement, the utility maintains, it cannot build the treatment plant required by the Surface Water Treatment Rule, and bring its water supply into compliance with federal law. The utility requests memorandum account protections since the lawsuit over this issue has become prolonged, and must be resolved to protect the consumers.

Additionally, the utility has applied for Commission approval of approximately \$15.5 million (in addition to the estimated \$4.5 million to build the treatment facility) in State Revolving Fund monies to repair the rest of the DLWC system. Legal and regulatory expenses related to this request (A.00-12-011) are likely to

exceed the regulatory expense approved in DLWC's last general rate case. Since regulatory expenses are normally considered reasonable business expenses, DLWC is requesting memorandum account treatment so that it may, if it makes its case, recover its regulatory expenses in excess of those last allowed. DLWC serves 1,237 flat rate and 42 metered customers around Donner Lake, in Placer and Nevada Counties. DLWC's rates were established in June 3, 1999, pursuant to Res. W-4149 which granted a general rate increase of \$62,039 or 17.27%. Litigation has been protracted beyond that authorized in the last general rate increase.

## **DISCUSSION**

Staff has reviewed the utility's request and recommends approval of the memorandum account to track State Revolving Fund (SRF) legal expenses in A.00-12-011. Proper and expeditious resolution of A.00-12-011 is in the public interest. The Commission has approved memorandum accounts in the past, when utilities face expenses that could have not been reasonably foreseen in the last general rate case, when they could impact the financial situation of the utility significantly and where resolution of the situation that results in incurring the expense is in the public interest. These expenses were not anticipated. Normally the request to borrow funds from the SRF would have been filed as an advice letter or filed through an application seeking ex parte approval. The application was filed as a formal Application at the request of the staff due to the fact that any filing by Donner Lake Water Company would be considered controversial as a result of the system failure last Summer. Therefore this application is subject to the formal hearing process and the expenses associated with such a proceeding that were not included in the company's revenue requirement in the last general rate request.

At the Commission Meeting of May 3, 2001, Ms. Emilie Kashtan, a customer of Donner and a party to A.01-12-011 expressed several concerns with this resolution. We note that the more proper vehicle to note concerns or to protest a proposed resolution is through the filing of a protest. In that matter the company can respond to the protestant and to the staff. Then in the resolution the protest and the response can be discussed with the appropriate recommendation. Since Ms. Kashtan chose to protest in person, it is necessary to respond via this resolution.

Here are Ms. Kashtan's concerns: The loan amount now requested by Donner Lake is \$15.5 million up from the originally filed amount of \$12.5 million. In addition she noted that the time frame in which the owner has sought loan approval was not seven years as stated, but less. She noted that in addition to the request for the \$15.5 million that there still is the compliance necessary to build a filtration plant, estimated as high as an additional \$4.5 million.

Ms. Kashtan noted that 87% of the over 90% of the customers who voted supported selling the system to the Truckee-Donner PUC (TD-PUC) and that the company should not be allowed to accrue costs to the requested memorandum account associated with the sale of or the condemnation of the system. We note that Commission policy agrees with Ms. Kashtan's position that customers should not be expected to pay for legal fees to defend a condemnation. In the past, costs associated with condemnation proceedings in Superior Court have been borne, in their entirety, by the owner or shareholders of the utility in question. It has **never** been this Commission's policy to allow these costs for ratemaking.

Finally Ms. Kashtan, the party representing the homeowners in A.00-12-011, noted that the company had no capital replacement plan to replace a very old system, thereby implying that had DLWC replaced some of its plant, a memorandum account request would not now be necessary. Notwithstanding this position, we note that the record in A.00-12-011 reveals that a variety of reasons have contributed to the company's accrual of legal expenses in an amount that could not reasonably have been anticipated in DLWC's last request for general rate relief in 1999. Therefore, future legal expenses associated with A.00-12-011 should be accrued in a memorandum account so that this Commission can later determine whether it is reasonable for the utility to recover those expenses in rates.

DLWC should be authorized regulatory expenses incurred in processing A.00-12-011. It may request recovery from this amount by advice letter. Staff will audit the account and recommend disposition, as the public interest requires, considering all factors including the outcome of the litigation.

In the Southern California Water Co. Headquarters case, this Commission clearly stated that memorandum account tracking could only occur prospectively:

"It is a well established tenet of the Commission that ratemaking is done on a prospective basis. The Commission's practice is not to authorize increased utility rates to account for previously incurred expenses, unless, before the utility incurs those expenses, the Commission has authorized the utility to book those expenses into a memorandum account or balancing account for possible future recovery in rates. This practice is consistent with the rule against retroactive ratemaking." (Emphasis in original.) Decision 92-03-094 (March 31, 1992) 43 Cal. P.U.C. 2d 600

Therefore, we will only allow the tracking of expenses associated with A.00-12-011 incurred after the establishment of this memorandum account.

DLWC should not be authorized to accrue in a memorandum account the legal, accounting, and other consulting services costs it incurs in pursuing the lawsuit

with the Association. It has had the lawsuit dismissed for lack of CEQA documentation. It will take some time to complete the environmental studies. When those studies are complete, DLWC may again submit an appropriate request for memorandum account treatment for anticipated expenses.

### **NOTICES AND PROTESTS**

DLWC has not noticed its customers concerning this request. However, the customers are aware of the request. DLWC must notice its customers when requesting amortization. At that time, the customers can provide public input on the reasonableness of the utility's recovery of memorandum account.

### **FINDINGS AND CONCLUSIONS**

1. DLWC is incurring unanticipated expenses in its Application 00-12-011.
2. DLWC should be allowed to establish one expense memorandum account for tracking legal and accounting costs incurred in processing A.00-12-011.
3. DLWC is not presently incurring legal expenses in its litigation with the Donner Lake Village Homeowners Association.
4. At this time, DLWC should not be authorized to establish a memorandum account for expenses associated with the litigation with the Donner Lake Village Homeowners Association.
5. DLWC should be allowed to establish one memorandum account for legal and accounting costs in processing A.00-12-011.
6. The Commission has approved memorandum accounts for water utilities for unanticipated or extraordinary legal expenses that could not have foreseen in the last general rate case.
7. The establishment of a memorandum account does not guarantee recovery of the expenses booked to that account.
8. Traditionally, utilities have not been authorized to establish a memorandum account to track costs associated with condemnation suits or to recover in rates the costs to defend condemnation of a water system.
9. The burden of proof as to the reasonableness of any recovery of expenses is on the utility.

**IT IS ORDERED that:**

1. Donner Lake Water Company is authorized to establish a memorandum account for the legal and accounting costs that it incurs after the effective date of this resolution in A.00-12-011.
2. This resolution is effective today.

I certify that the foregoing resolution was duly introduced passed, and adopted at a conference of the Public Utilities Commission of the State of California held on May 14, 2001; the following Commissioners voting favorably thereon:

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WESLEY M. FRANKLIN  
Executive Director

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
CARL W. WOOD  
GEOFFREY F. BROWN  
Commissioners